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| <p>“...in the form of prizes that have immediate value...”</p> | <p>Cash and Merchandise</p> <p>“As properly construed in view of the specification, ‘prizes that have immediate value’ means cash or merchandise. Thus, as properly construed, the ‘disbursing the prize pool...’ limitation recited in claims 1 and 5 of the ‘154 patent means paying out cash or merchandise...”</p> | <p>Prizes That Have Immediate and Inherent Value</p> <p>UBT’s prize pool always includes multiple prizes that are tournament points and/or play chips. MMJK has noted, “‘prizes that have immediate value’ means cash or merchandise.” Tournament points and play chips are not cash or merchandise.</p> <p>Therefore, because UBT’s prize pools always include multiple prizes that are tournament points and/or play chips, which MMJK admits are not “prizes that have immediate value,” UBT’s websites do not satisfy this limitation of the ‘154 patent claims.</p> <p>Moreover, as Mr. Rosenthal further explains in his Declaration submitted hereto, even UBT’s cash and merchandise prizes do not have “immediate value,” because before any prize is awarded or disbursed through the UBT websites, the winning player must first claim the prize and then verify his eligibility. (Exh. A to UBT’s Answer.) Only after claiming his prize and verifying eligibility can a player receive his prize within 30 days of claiming it. Thus, even if cash and/or merchandise are disbursed by the UBT websites, they may never have any value, if they are not claimed by winning players or if winning players do not meet the eligibility requirements required to receive those prizes. For this separate reason, UBT’s websites do not satisfy the “prizes that have immediate value” limitation of the ‘154 patent claims.</p> |
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| <p>“...subsequent to completion of the tournament.”</p> | <p><u>After the Tournament Is Completed</u></p> <p>“Because the winner receives cash after the tournament is over, the tournament illustrated in this exhibit to Mr. Rosenthal’s declaration infringes the claims of the ‘154 patent...</p> <p>“Thus, there is a winner and three qualified runner-up players that will receive cash prizes... within 2-4 weeks after the tournament. This tournament infringes the claims of the ‘154 patent.</p> <p>“Once the Court understands that in the tournaments at issue in this case, the winners, and in many cases a runner-up player or players, receive cash or merchandise prizes in addition to tournament points, then it becomes clear that every tournament that pays out cash or merchandise to at least the winner supports a finding of infringement.”</p> | <p><u>After the Tournament Is Completed</u></p> <p>MMJK proposes a construction that ignores the ordinary meaning of “disbursing the prize pool...subsequent to completion of the tournament.” As discussed above, the “prize pool” is every prize awarded as part of the tournament. The UBT prize pool always includes multiple prizes that are tournament points and/or play chips.</p> <p>In order to understand why the UBT websites do not satisfy this limitation, one must understand how the games on the UBT websites function. When a runner-up player is eliminated from a tournament and his prize is tournament points or play chips, he immediately receives the tournament points or play chips. That is, as soon as a runner-up player is eliminated, UBT credits his account with tournament points or play chips, even though the tournament is still ongoing. Tournament points and play chips are only used to enter into other UBT tournaments. For example, as soon as the 5th place player places in the tournament, UBT immediately credits his account with the tournament points or play chips he has won, even though four players are still playing in the ongoing tournament. As such, only one eligible runner-up player (2nd place) receives his tournament points prize subsequent to the completion of the tournament--tournament points are disbursed to all other eligible runner-up players prior to completion of the tournament. Therefore, because UBT’s prize pools always include multiple prizes that are tournament points and/or play chips that are disbursed prior to completion of the tournament, UBT’s websites do not satisfy the “subsequent to completion of the tournament limitation” of the ‘154 patent claims.</p> <p>Despite MMJK’s arguments, it is of no consequence whether the winner receives cash after the tournament is over or whether the winner and multiple runner-up players receive cash prizes after the tournament is over. Prize pools in the UBT websites always include tournament points and/or play chips, and the prizes of the prize pools are not disbursed subsequent to completion of the tournament, as</p> |
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